

MONTANA LEGISLATIVE HISTORY

Chapter 429 ~~19~~ 19 93

Bill H _____ S 392 Original bill & history X c

H. Committee on JUDICIARY

Hearing Date(s) 3/18 X c

EXEC ACTION 3/24 X c

3/25 X c

_____ c

Date Out _____ c

S. Committee on JUDICIARY

Hearing Date(s) 2/20 X c

EXEC ACTION _____ c

_____ c

_____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

SB 392 INTRODUCED BY WATERMAN
REVISE CHILD SUPPORT ENFORCEMENT

2/13	INTRODUCED		
2/13	REFERRED TO JUDICIARY		
2/13	FIRST READING		
2/13	FISCAL NOTE RECEIVED		
2/20	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED	49	0
2/23	2ND READING PASSED	47	1
2/24	3RD READING PASSED		
3/01	TRANSMITTED TO HOUSE		
3/01	REFERRED TO JUDICIARY		
3/01	FIRST READING		
3/08	REVISED FISCAL NOTE REQUESTED		
3/13	REVISED FISCAL NOTE RECEIVED		
3/15	REVISED FISCAL NOTE PRINTED		
3/18	HEARING		
3/25	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/30	2ND READING CONCURRED	91	6
4/01	3RD READING CONCURRED	87	11
4/06	RETURNED TO SENATE WITH AMENDMENTS		
4/06	2ND READING AMENDMENTS CONCURRED	50	0
4/07	3RD READING AMENDMENTS CONCURRED	49	0
4/14	SIGNED BY PRESIDENT		
4/14	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
CHAPTER NUMBER 429			
EFFECTIVE DATE: 10/01/93			

SB 393 INTRODUCED BY FRITZ, ET AL.
ADOPT MODEL SCHOOL INTEGRATED PEST AND PESTICIDE
MANAGEMENT SAFETY PROGRAM ACT

2/13	INTRODUCED		
2/13	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/13	FIRST READING		
2/17	HEARING		
2/18	FISCAL NOTE REQUESTED		
2/20	COMMITTEE REPORT—BILL NOT PASSED	38	12
2/20	ADVERSE COMMITTEE REPORT ADOPTED		
2/23	RECONSIDERED ADOPTION OF ADVERSE COMMITTEE REPORT AND PLACED ON 2ND READING	49	0
2/23	FISCAL NOTE RECEIVED		
2/23	FISCAL NOTE PRINTED	49	0
2/23	2ND READING PASSED AS AMENDED	47	1
2/24	3RD READING PASSED		
3/01	TRANSMITTED TO HOUSE		
3/01	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/01	FIRST READING		
3/09	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	87	11
3/16	3RD READING CONCURRED	88	10
3/20	RETURNED TO SENATE		
3/21	SIGNED BY PRESIDENT		
3/21	SIGNED BY SPEAKER		
3/22	TRANSMITTED TO GOVERNOR		
3/25	SIGNED BY GOVERNOR		

CHAPTER NUMBER 177
EFFECTIVE DATE: 10/01/93

SB 394 INTRODUCED BY HARP, ET AL.
REGULATE ATTORNEY FEES PAYABLE IN WORKERS' COMPENSATION
MATTERS

2/13	INTRODUCED		
2/13	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/13	FIRST READING		
2/18	HEARING		
2/22	COMMITTEE REPORT—BILL NOT PASSED		
2/22	ADVERSE COMMITTEE REPORT REJECTED	24	24
2/23	TAKEN FROM COMMITTEE AND PLACED ON 2ND READING	26	23
2/23	2ND READING PASSED	25	24
2/24	3RD READING PASSED	26	23
3/01	TRANSMITTED TO HOUSE		
3/01	REFERRED TO WORKERS' COMP SELECT COMMITTEE		
3/01	FIRST READING		
3/08	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED AS AMENDED AND REREFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/16	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/25	2ND READING CONCURRED	74	26
3/25	3RD READING CONCURRED	73	27
4/05	RETURNED TO SENATE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS NOT CONCURRED	50	0
4/12	FREE CONFERENCE COMMITTEE APPOINTED		
4/24	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/24	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	32	15
4/24	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	33	16
4/13	HOUSE		
4/13	FREE CONFERENCE COMMITTEE APPOINTED		
4/24	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/24	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	50	47
4/24	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 REJECTED	49	50
4/24	MOTION FAILED TO RECONSIDER PREVIOUS ACTION AND PLACE ON 3RD READING DIED IN PROCESS	35	63

SB 395 INTRODUCED BY HARP
LIMIT LENGTH FOR VEHICLE HAULING LOGS; LIMIT MAXIMUM OVERHANG
LENGTH OF LOGS

2/15	INTRODUCED		
2/15	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/15	FIRST READING		
2/16	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASSED	47	1
2/23	3RD READING PASSED	44	5
2/23	TRANSMITTED TO HOUSE		
2/23	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/23	FIRST READING		

SENATE BILL NO. 392

INTRODUCED BY WATERMAN

IN THE SENATE

FEBRUARY 13, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

FEBRUARY 22, 1993

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1993

PRINTING REPORT.

SECOND READING, DO PASS.

FEBRUARY 24, 1993

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 47; NOES, 1.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 1, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

MARCH 25, 1993

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 30, 1993

SECOND READING, CONCURRED IN.

APRIL 1, 1993

THIRD READING, CONCURRED IN.
AYES, 87; NOES, 11.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 6, 1993

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 7, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0392, Third Reading.

DESCRIPTION OF PROPOSED LEGISLATION:

The bill increases the state's ability to enforce support obligations by: allowing the Department of SRS to issue seek-work orders, providing for a lien on Montana Lottery winnings of Child Support Enforcement (CSE) debtors, and amending MCA §45-5-621 (criminal non-support).

ASSUMPTIONS:

Department of Social and Rehabilitation Services (SRS):

1. Any additional costs to the Child Support Enforcement Division (CSED) are estimated to be negligible and the division will be able to absorb the administrative duties, as funded in the executive budget.
2. Less than 1% of the total CSED caseload will be directly affected by the provision of this bill (230 cases in FY94 and 530 cases in FY95).
3. The primary effect of the criminal non-support changes in this bill will be a deterrent to non-payment of support.

State Auditor:

4. Lottery payments of under \$500 will continue to be paid by vendors.
5. The state auditor's bad debt offset system will continue to function as it currently does.

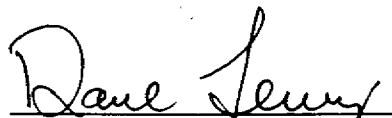
FISCAL IMPACT:

Expenditures: None

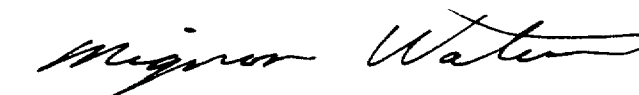
Revenues:

SRS: Increased CSE collections may result in additional revenue to the general fund. Presently, the CSE state special revenue account balance in excess of \$500,000 at fiscal year end (after CSED program costs are paid for) reverts to the general fund. However, at this time it is not possible to estimate what increase in collections will result from this bill, and therefore the possible increase to the general fund.

State Auditor: Currently the bad debt offset system is financed by a 12% charge on collected debt for various government agencies. To the extent debt is collected prior to being turned over to the state auditor for collection, revenue for program operations would decline. Currently, this amount of revenue would be very small. If a big winner who owed substantial money was discovered prior to the auditor's offset system, a one-time loss could be substantial. It is not expected to materially affect the current program.

 3-13-93

DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 3/15/93
MIGNON WATERMAN, PRIMARY SPONSOR DATE

Fiscal Note for SB0392, Third Reading

SB 392

1 **Senate** BILL NO. **392**
2 INTRODUCED BY *Mike Waters*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE STATE'S
5 ABILITY TO ENFORCE SUPPORT OBLIGATIONS; ALLOWING THE
6 DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO ISSUE
7 SEEK-WORK ORDERS; PROVIDING FOR A LIEN ON LOTTERY WINNINGS
8 WHEN THE WINNER OWES A DEBT TO OR COLLECTED BY A IV-D
9 AGENCY; REVISING THE CRIME OF NONSUPPORT; AND AMENDING
10 SECTIONS 17-4-105 AND 45-5-621, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 NEW SECTION. **Section 1.** Seek-work orders. Whenever in
14 a proceeding under this chapter to establish or enforce a
15 support order it is determined that the obligor is
16 unemployed or underemployed, the department may:

17 (1) order the obligor to seek employment and report
18 periodically to the department with a diary, listing, or
19 other memorandum of the obligor's efforts in accordance with
20 the order; and

21 (2) order the obligor to report to a job service office
22 maintained by the department of labor and industry for job
23 search services or to make application under the job
24 training partnership act or similar programs for
25 participation in training or work programs.

1 NEW SECTION. **Section 2.** Lien on lottery winnings for
2 debt collected by IV-D agency -- notice to agency -- payment
3 to agency -- procedure. (1) For purposes of this section,
4 "IV-D agency" means the state child support enforcement
5 agency created pursuant to Title IV-D of the Social Security
6 Act and providing services under Title 40, chapter 5.

7 (2) The IV-D agency shall periodically certify to the
8 state lottery the names and social security numbers of
9 persons owing a debt to or collected by the IV-D agency.

10 (3) Prior to the payment of lottery winnings in excess
11 of \$600, the state lottery shall check the name of the
12 winner against the list of names and social security numbers
13 of persons owing a debt to or collected by the IV-D agency.

14 (4) (a) If the winner is on the list of persons owing a
15 debt to or collected by the IV-D agency, the state lottery
16 shall notify the IV-D agency and the agency then has a lien
17 against the winnings in the amount of the debt owed to or
18 collected by the IV-D agency.

19 (b) If the lottery winnings are to be paid through the
20 state auditor, the lottery winner is entitled to notice and
21 opportunity for hearing under Title 17, chapter 4, part 1,
22 prior to any offset of the debt against the winnings.

23 (c) If the lottery winnings are to be paid directly by
24 the state lottery, the amount of the debt owed to or
25 collected by the IV-D agency must be held by the lottery for

a period of 30 days from the lottery's confirmation of the amount of the debt to allow the IV-D agency to institute any necessary garnishment or withholding proceedings. If a garnishment or withholding proceeding is not initiated within the 30-day period, the lottery shall release the payment to the winner.

Section 3. Section 17-4-105, MCA, is amended to read:

"17-4-105. Authority to collect debt -- offsets. (1)

Once a debt of a state agency has been transferred to the state auditor, he the state auditor shall have the authority to collect it. The state auditor may contract with commercial collection agencies for recovery of debts owed the state.

(2) The state auditor shall offset any amount due a state agency from a person or entity against any amount, including refunds or taxes, owing the person or entity by any state agency, provided the state auditor may not exercise this right of offset until the debtor has first been notified by the state auditor and been given an opportunity for a hearing. No An offset may not be made against any amount paid out as child support collected by the department of social and rehabilitation services. The state auditor shall deduct from the claim and draw his warrants for the amounts offset in favor of the respective state agencies to which due and for any balance in favor of

the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available ~~shall~~ must be applied first to debts owed by reason of the nonpayment of child support and then in such the manner as the state auditor, in his the state auditor's discretion, ~~shall~~ determine determines.

(3) (a) The department retains the power to offset tax refunds due individuals against taxes owed the state, provided the department may not exercise this right of offset until the taxpayer has been notified by the department and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

(c) Appeal from the decision of the department after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and any decision made as a result

of that proceeding has become final.

(4) (a) A debt ~~resulting-from-or-relating-to--a--child support--obligation~~ owed to the department of social and rehabilitation services or being collected by the department of social and rehabilitation services on behalf of any person or agency may be offset by the state auditor if:

{i} the debt is being enforced or collected by the department of social and rehabilitation services under Title IV-D of the Social Security Act;

{ii} ~~the debt is for repayment of child support payments retained contrary to the assignment at 53-2-613; or~~

{iii} ~~the debt is for costs of fees under any contract, judgment, or administrative order entered in the course of child support enforcement by the department of social and rehabilitation services;~~

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the state auditor for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and any

decision made as a result of that proceeding has become final. The hearing must be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of social and rehabilitation services shall adopt rules necessary to determine the hearing procedures.

(5) If, in the discretion of the state auditor, the person or entity refuses or neglects to file ~~his~~ a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of ~~such the person~~ or entity; if approved by the department of administration, it shall have the same force and effect as though filed by such the person or entity. The amount due any person or entity from the state or any agency thereof of the state is the net amount otherwise owing such the person or entity after any offset as provided in this section ~~provided.~~

Section 4. Section 45-5-621, MCA, is amended to read:

"45-5-621. **Nonsupport.** (1) A person commits the offense of nonsupport if he the person fails to provide support ~~which-he~~ that the person can provide and ~~which-he~~ that the person knows he the person is legally obliged to provide to a spouse, child, or other dependent.

(2) (a) A person commits the offense of aggravated nonsupport if:

~~{a}{i}~~ the offender has left the state ~~to avoid the~~

duty-of-support without making reasonable provisions for the support of a spouse, child, or other dependent; or

(b)(ii) the offender has been previously convicted of the offense of nonsupport.

(b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is inability to pay, the person's inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support. In the absence of a support order, no other evidence is required to prove that the person is legally obligated to provide support than is required to prove the facts in a civil action.

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined not to exceed \$500 or be imprisoned in the county jail for any a term not to exceed 6 months, or both.

(b) A person convicted of nonsupport who has failed to provide support for 6 months or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

(c) A person convicted of aggravated nonsupport shall be fined not to exceed \$50,000 or be imprisoned in the state prison for any a term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty, or after conviction, instead of the penalty provided in subsection (7) or in addition to

1 that penalty, the defendant may post a bond, undertaking, or
2 other security. This security must be for a period of 2
3 years or, in the case of aggravated nonsupport, for a period
4 of 10 years. The court shall fix the sum of the security in
5 an amount sufficient to ensure payment of support by the
6 defendant. After the security is posted, the court shall
7 release the defendant on the condition that the defendant
8 comply with any order for support. If there is no order for
9 support, the court shall order the defendant to pay support
10 to the spouse, child, or other dependent in an amount that
11 is consistent with the defendant's ability to pay and, if
12 applicable, the child support guidelines adopted under
13 40-5-209.

14 (9) The bond, undertaking, or other security posted
15 pursuant to subsection (8) must be forfeited if the
16 defendant fails to pay support as ordered, and the court may
17 proceed to try the defendant upon the original charge of
18 nonsupport, sentence the defendant under the original plea
19 or conviction, or enforce a suspended sentence.

20 (10) As part of any prosecution under this section, the
21 court shall also order the defendant to make restitution to
22 the spouse, the child's caretaker, or any other dependent or
23 to the person or agency that provided support to the spouse,
24 child, or other dependent. The amount of restitution is the
25 sum of the arrearages payable under a support order or, if

1 there is no support order, an amount determined reasonable
2 by the court. The terms for payment of restitution must be
3 determined by the court.

4 (11) The court may order, in its discretion, any fine
5 levied or any bond forfeited upon a charge of nonsupport
6 paid to or for the benefit of any person that the defendant
7 has failed to support. A bond, undertaking, or other
8 security forfeited under subsection (9) must be paid to the
9 person or agency entitled to receive support from the
10 defendant.

11 (12) When any payment of public assistance money has
12 been made by the department of social and rehabilitation
13 services under the provisions of Title 53 for the support or
14 aid of any person, a representative of the department may
15 sign a criminal complaint against the person obligated by
16 law to support the person who received the public
17 assistance.

18 (13) The court may order that a term of imprisonment
19 imposed under this section be served in another facility
20 made available by the county and approved by the sentencing
21 court. The defendant, if financially able, shall bear the
22 expense of the imprisonment. The court may impose
23 restrictions on the defendant's ability to leave the
24 premises of the facility and require that the defendant
25 follow the rules of that facility. The facility may be a

1 community-based prerelease center as provided for in
2 53-1-203. The prerelease center may accept or reject a
3 defendant referred by the sentencing court."

4 NEW SECTION. **Section 5.** Codification instruction. (1)

5 [Section 1] is intended to be codified as an integral part
6 of Title 40, chapter 5, part 2, and the provisions of Title
7 40, chapter 5, part 2, apply to [section 1].

8 (2) [Section 2] is intended to be codified as an
9 integral part of Title 23, chapter 7, and the provisions of
10 Title 23, chapter 7, apply to [section 2].

11 NEW SECTION. **Section 6.** Severability. If a part of

12 [this act] is invalid, all valid parts that are severable
13 from the invalid part remain in effect. If a part of [this
14 act] is invalid in one or more of its applications, the part
15 remains in effect in all valid applications that are
16 severable from the invalid applications.

-End-

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 20, 1993,
at 1:30 p.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)

Members Excused: Sen. Towe, Sen. Blaylock

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 418
	SB 345
	SB 371
	SB 391
	SB 344
	SB 351
	SB 425
	SB 392
Executive Action:	SB 418
	SB 345
	SB 371
	SB 391
	SB 344
	SB 351
	SB 392
	SB 246
	SB 310
	SB 400
	SB 425

Waterman submitted an amendment. (Exhibit #6) The language in the original bill, when rewritten, was not clear when the evaluation were required. Senator Waterman said the amendments would also correct a section that was in the wrong place in the existing codes.

Proponents' Testimony:

Mike Ferriter, Department of Corrections and Human Services, told the Committee that last year probation parole officers in Montana wrote 1,400 presentence investigations. As this statute now reads, anytime a presentence investigation is written an evaluation needs to be attached to that investigation. The original statute specified that only when a sex offender was being sentenced was an evaluation by a qualified therapist needed. Mr. Ferriter said some District Court Judges interpret the statute to mean that any kind of presentence investigation needs an evaluation attached. SB 344 goes back to some of the old language and specifies that if it is a sex offense, an evaluation by a qualified therapist needs to be attached, and clarifies who would pay for the evaluation. SB 344 would help address the confusion existing in the sentencing in District Court.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

NONE

Closing by Sponsor:

Senator Waterman closed.

HEARING ON SB 392

Opening Statement by Sponsor:

Senator Waterman, District 22, told the Committee that SB 392 would increase Montana's ability to enforce child support laws. Senator Waterman told the Committee that there are four provisions to SB 392. If a parent is purposely avoiding employment or is under employed purposefully, the Department of Social and Human Services has the opportunity to force the individual to seek work. SB 392 includes a lottery provision. The lottery provision would require the Montana Lottery to check on an individual to see if they owed back child support before making payments of over \$600. SB 392 would enhance the existing procedure for collecting child support debts from criminal nonsupport from a misdemeanor to a felony. Senator Waterman told the Committee that there is an existing statute that defines aggravated child support. Under the provision, if the court

determines that obligor meets the criteria set forth in the criminal nonsupport language, and the obligor has failed to provide child support for the last six months, there can be a fine up to \$5000 and/or imprisonment of up to two years. The courts can also use alternative sentencing for incarceration and the cost of incarceration would be assigned to the obligor. Another alternative would be for the court to establish a bond in lieu of a fine or incarceration.

Proponents' Testimony:

Mary Ann Wellbank, Administrator Child Support Enforcement Division, read from prepared testimony. (Exhibit #7)

Diane Sands, Montana Women's Lobby, strongly supported SB 392.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Crippen asked Senator Waterman about alternatives to incarceration. Senator Waterman said there are alternatives for incarceration laid out in SB 344. Senator Waterman pointed out that before incarceration, an individual would have to be six months behind in child support.

Amy Pfeifer, Staff Attorney for the Department of Social and Human Services, told the Committee that SB 344 would add additional enforcement tools. Currently, prosecution for nonsupport does not happen very often, therefore SB 344 would make the prosecution of nonsupport easier without shifting the burden of proof. Ms. Pfeifer told the Committee that there would be a number of steps before an individual would be incarcerated.

Closing by Sponsor:

Senator Waterman told the Committee that the Lottery Commission requested an amendment that would remove them from liability if they make a good faith effort to check on back support before dispersing winnings. Senator Waterman submitted an amendment. (Exhibit #8) Senator Waterman told the Committee that the Department of Social and Human Services supported the amendments. Senator Waterman urged the Committee to pass SB 392.

HEARING ON SB 371

Opening Statement by Sponsor:

Senator Rye, District 47, told the Committee that SB 371 was requested by the insurance industry. SB 371 attempts to put a stop to consumer fraud, by fixing a flaw in the existing code. Senator Rye told the Committee that the problem with the existing

EXECUTIVE ACTION ON SB 344

Motion/Vote:

Senator Halligan moved to amend SB 344. (sb034401.avl) The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Crippen moved SB 344 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 351

Discussion:

Senator Halligan explained the amendments. (Exhibit #10)

Motion/Vote:

Senator Halligan moved to amend SB 351. The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Halligan moved SB 351 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 392

Motion/Vote:

Senator Halligan moved to AMEND SB 392. (Exhibit #8) The motion CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Halligan moved SB 392 DO PASS AS AMENDED. The motion CARRIED with Chair Yellowtail voting NO.

EXECUTIVE ACTION ON SB 345

Discussion:

Senator Doherty told the Committee that SB 345 had problems because of the testimony regarding the question of property.

Motion:

Senator Doherty moved to TABLE SB 345.

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-20-92

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe			X
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock			X
Senator Rye	X		

F08

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 21, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 392 (first reading copy -- white), respectfully report that Senate Bill No. 392 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 2, line 16.

Following: "shall"

Insert: "make a good faith attempt to"

2. Page 2, line 18.

Following: "agency."

Insert: "The state lottery has no liability to the IV-D agency or the individual on whose behalf the IV-D agency is collecting the debt if, after a good faith effort to do so, the state lottery fails to match a winner's name to a name on the list or is unable to notify the IV-D agency of a match. The IV-D agency shall provide the state lottery with written notice of a support lien promptly upon the state lottery's notification of a match."

3. Page 3.

Following: line 6

Insert: "(d) The IV-D agency, in its discretion, may release or partially release the support lien upon written notice to the state lottery.

(e) A support lien under this section is in addition to any other lien created by law."

-END-

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 2-20-93
BILL NO. SB392

**Senate Bill 392
An Act Increasing the Ability to Enforce Child Support**

**Testimony
Submitted by Mary Ann Wellbank, Administrator
Child Support Enforcement Division
Department of Social and Rehabilitation Services**

Two weeks ago I spoke to the Senate Judiciary Committee about the startling facts that many people, who are financially able to do so, just plain do not support their children. I won't reiterate those facts.

In my position, I speak to many people every day who are extremely frustrated by the current system. They are primarily single parents trying to make ends meet, struggling to hold jobs, raise families and stay off welfare. Or they are remarried parents whose spouses are faithfully and regularly providing support to their children of a previous marriage. These parents are legally entitled to child support. They have a court or administrative order to prove it. The custodial parent often knows where the person owing the support resides, yet neither the division nor the courts can do nothing to help them. The federal Department of Human Services in a recent report stated, "Almost 2/3 of America's poor families are headed by single parents. In 1989 of the 10 million women raising 16 million children in homes where the father was absent, only 58% were awarded child support rights. Only half that group received their full payments, while a quarter received nothing at all. Receipt of child support can clearly mean the difference between economic dependence and independence. "

Both former President Bush and President Bill Clinton have recognized child support as the key to getting Americans out of poverty and echo the need for strengthening the nation's child support system.

Senate Bill 392 is a crucial piece of child support legislation which will help many Montanans. It does not grant broad enforcement powers to the Child Support Enforcement Division, but offers further necessary refinements of the existing system and most importantly, improves access and alternatives for parents to independently pursue -through the Montana Judicial System - the support to which they are legally entitled. It is mostly a bill to address the needs of the thousands of Montana children who are not being supported by their parents and who have no other course of action.

First of all, I'd like to point out that all sections of SB 392 are strongly recommended by the U.S. Commission on Interstate Child Support in its Report to Congress, resulting from several years of study. (HAND OUT)

The first part of the bill relates to "Seek Work" orders. This is a small, but logical, addition to the administrative powers of the division hearing function. Obviously, absent parents who have the responsibility to support their children also have the responsibility to finding appropriate work to assure that support. This section of the bill allows the CSED hearing officer to order an individual to actively seek employment or to improve job skills to find suitable employment. This is a natural and logical extension of the current hearings process. Its intent is to reinforce parental responsibility and accountability, but it works both ways. It can also help resolve disputes between the custodial parent and the absent parent when the absent parent has made a good faith, documented effort to find employment.

The second part of the bill relates to liens on lottery winnings. This, again, is a very small and inexpensive way to fill in some of the gaps in the system - to ensure that windfalls are used first to support children. The CSED would provide a listing of people who are delinquent in support, and the lottery would make a good faith effort to notify the CSED of delinquent parents who are winners. In 1992, approximately 250 people won over \$600 in the Montana lottery. One \$5,000 winner currently owes over \$19,000 in support for his children. This case opened in 1984 and the children have not received one penny in support. One winner of \$50,000 owes less than \$2,000 in support, yet hasn't paid it. Why not? Probably because child support is not a top priority.

The third, and major part of this bill relates to enhancing criminal non-support and making it easier to pursue in the Montana court system. I can assure you there is an urgent public outcry for this legislation. Current law just isn't useful. It is vague and easy to circumvent, and doesn't set any standards for findings or punishment. SB 392 does. It is very important legislation.

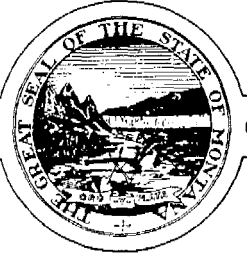
I am sure you will hear testimony much better than anything I could give about how absent parents who desert their children in favor of a responsibility-free and penalty free existence, and leave the custodial parent totally in charge of providing for food, clothing, shelter, schooling and other basic needs. When absent parents do not take reasonable steps to insure the safety and welfare of their own children, is it not child abuse?

In your deliberations you need to be aware that there are several other child support bills under consideration by the Legislature this session. You have already seen some. Please give each bill very thoughtful, independent and objective consideration. All are integral pieces which fill the gaps in essential services in Montana, which Montana taxpayers, citizens and innocent children depend upon. Child support enforcement is a very complex and multi-faceted issue. A variety of legislative tools are necessary to customize services to the individual requirements of a particular case. All cases are different. What works effectively for one case will not necessarily work for another.

Thank you for the opportunity to provide testimony on SB 392. **SB 392 is presented to empower people, not government.** I urge your very strong support of this bill. CSED staff attorney, Amy Pfeifer and I are available to answer questions about this legislation.

7
2-20-93
SB 392

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

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(406) 444-4614

PO BOX 5955
HELENA, MONTANA 59604-5955

Amendments to SB 392 Proposed by Child Support Enforcement Division

1. Page 2, line 16.

Following: "shall"

Insert: "make a good faith attempt to"

2. Page 2.

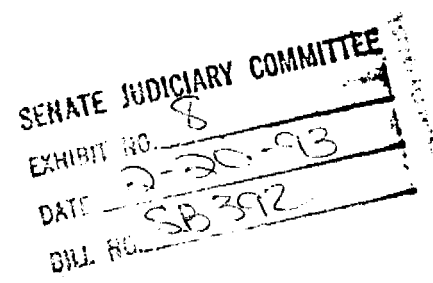
Following: line 18

Insert: "The state lottery shall have no liability to the IV-D agency or the individual on whose behalf the IV-D agency is collecting the debt when, after a good faith effort to do so, the state lottery fails to make a match or is unable to notify the IV-D agency of a match. The IV-D agency shall provide the state lottery a written notice of support lien promptly upon the state lottery's notification of a match."

3. Page 3.

Following: line 6

Insert: "(d) The IV-D agency, in its discretion, may release or partially release the support lien upon written notice to the state lottery. (e) A support lien under this section is in addition to any other lien created by law."



DATE 2/20/93

SENATE COMMITTEE ON JUDICIARY

BILLS BEING HEARD TODAY: SB 344, 345, 351, 371, 391, 392, 418, 425

Name	Representing	Bill No.	Check One	
			Support	Oppose
LAURENCE KERMILLE	CS EKTREIBOS	418	✓	
John Ginter	" " "	418	✓	
GEORGE OCHENSKY	CONF. SALISBURY/KOOTENAI	418	✓	
PRANCE L. HOPPE	SELF	418	X	
MICHAEL WHEAT	SELF	345	✓	
Carl Harvath	Clarks of Dist Court	351		✓
Maureen L. Sandholm	Gov. & Atty. Gen.	418	✓	
MA WILKIN	CSED	418 392	✓	
RICHARD L. KOEHL	BLDG CODES Bureau	246	✓	
Mike Ferrito	D.C.H.S	344	✓	
AL ELSER	FISH, WILDLIFE & PARKS	418	✓	
Stan Brackshaw	MT Trout Unlimited	418	✓	
Aquiline Benmark	AIA	345		✓
Aquiline Benmark	AIA	371	✓	
P. Ishikawa	State Farm Ins	345 371	✓	✓
Ron Watson	Farmers Insurance	345 371	✓	✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/20/93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 344, 345, 351, 371, 391, 392, 418, 425

Name	Representing	Bill No.	Check One	
			Support	Oppose
Diane Sands	MT Women Lobby	SB 351	✓	
"	mt Women Lobby	392	✓	
SHARON HOFF	MT Catholic Assoc.	391		X
Patrick M. Cleary	Associated Students, U of Montana	391	✓	
beck	MDT	391		X
John McArthur	AS UM	391	✓	
Dave Brown	State Representative	391	✓	
John All	MT Defense Trial Lawyers	345		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on March 18, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 392, SB 371, SB 321, SB 408
Executive Action: SB 406, SB 344, SB 264, SB 153, SB 321

HEARING ON SB 392

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, Senate District 22, Helena, said that this bill is one of a series of bills strengthening child support enforcement in the state of Montana. SB 392 provides seek-work orders; the department will be able to require people who owe

child support and evade court duties by purposely remaining unemployed or underemployed to seek employment.

There is also a lien on lottery winnings for child support. While this will not change the system for payment under \$600, for large winners the Montana Lottery will be required to check the listing of those who owe child support.

Proponents' Testimony:

Mary Ann Wellbank, Administrator, Child Support Enforcement Division (CSED), Social Rehabilitation Services, presented written testimony. EXHIBITS 1 and 2

Charmaine Murphy, Director, Montana Lottery, said that Lottery has been working with **Ms. Wellbank** and her department to come to an agreement, and it supports the bill as amended.

Amy Pfeifer, Montana State Bar, Women's Section, did not testify but was present to answer any questions from the committee.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. BERGMAN said if the state can't force these parents to seek work now, how will this be enforced in the future. **Ms. Wellbank** explained there are laws on the books now that should enforce child support payments, but unfortunately, they don't cover every situation. Generally, there are a lot of cases that fall between the cracks because the circumstances are different. **REP. BERGMAN** asked **Ms. Wellbank** whether judges are enforcing payment and, if not, whether this is a problem. **Ms. Wellbank** said it is a big problem, but she doesn't think it starts with the judges. First, CSED is administrative and does a lot of its own enforcement in Montana; but secondly, until there's national recognition of the child support problem, people will continue to treat it lightly.

REP. WHALEN referred to page 8, lines 10-13, and said this Section puts in a criminal offense. **Ms. Pfeifer** said the intent here is that the order of support speaks for itself, and the language that says "no other evidence is required to prove" comes from criminal law statutes from other states. **REP. WHALEN** asked **Ms. Pfeifer** to furnish him with a copy of those laws from other states.

REP. CLARK asked **Ms. Pfeifer** what the intention of Section 1 is and how CSED is going to enforce that section. **Ms. Pfeifer** explained that Section 1 refers to people who have professional degrees and skills and are making quite a bit of money; generally people who have high-paying jobs choose to take something lower so that they can get out of paying child support.

REP. TOOLE referred to page 8, lines 10-13 which states on line 10, "In the absence of a support order..." He asked Ms. Pfeifer if a court order has been placed and she said yes. The State just has to show that the person is a parent. REP. TOOLE asked if the parent will be prosecuted for a potential felony even though there's been no law established. Ms. Pfeifer said it is a moral obligation for a parent to support his or her child; it wouldn't be a felony but probably a first time misdemeanor.

REP. RICE referred to Section 1 and declared the language is vague. He asked John McRae, staff attorney, CSED, if he had any objection to adding due process consideration. Mr. McRae told REP. RICE that this particular statute dovetails with already existing procedures. CSED has administrative law process and administrative rule authority which allows them the contested case proceedings for determining these issues. As to issues of underemployment, CSED handles that all the time on a regular basis, and the modifications, for example, establish new orders. If an individual says he earns \$10,000 now, and in checking his back history CSED finds out he was formerly a geophysicist, an administrative officer ultimately makes that decision which is subject to judicial review by the District Court.

REP. RICE was concerned about the potential liability to the Lottery. He said the Lottery is making a good faith attempt to help with payments, and asked Ms. Murphy if the Lottery's staff has done an analysis. She replied that the Lottery is concerned about the winnings, and that was primarily the reason for putting the amendment in.

REP. VOGEL asked Mr. McRae whether this legislation would allow CSED to force a person to go back into a job, similar to the former job, so that he could retain a higher level of pay. Mr. McRae replied that only if it were determined that the person was underemployed as that term is defined, and that's why REP. RICE suggested having that term clarified. A hearings officer can make that decision based on the input by the parties.

REP. RICE said the bill as it reads on page 2, states that the State Lottery has liability to collect funds. If someone fell through the cracks and the Lottery made no effort to collect from that person, it would seem that the Lottery is liable, and it would have to reimburse the agency or the person who missed out on the child support payment. Mr. McRae and REP. RICE will work together on an amendment to clarify this language.

Closing by Sponsor:

SEN. WATERMAN stressed the hardships parents are causing children by not paying child support. She said she was talking about parents who willingly choose not to support their children, and she believes, as a state, Montana should not accept that. She emphasized that only 16 percent of parents who owe child support

in the state pay it. The legislature is trying to balance the Human Services budget, and they can't balance it until these people pay the state and their families.

HEARING ON SB 371

Opening Statement by Sponsor:

SEN. DAVID RYE, Senate District 47, Billings, introduced SB 371 as an act clarifying and limiting a motor vehicle liability insurer's liability under a policy. This is what is known as "stacking." In this case, it is the frequent case of the customer ripping off the company and ripping off other consumers as well. The insurance policies are based upon actual actuary experience. The 1987 legislature addressed the issue of stacking; unfortunately, the language adopted in the present law still allows stacking to occur. Stacking is a case of someone being insured under a multiple vehicle policy or under several policies, having an accident, and collecting on all the policies. This bill attempts to rectify that situation. The key part of the bill is on page 1, lines 17-19.

Proponents' Testimony:

Ronald Waterman, Farmers Insurance of Montana, said that in 1987, the legislature prohibited stacking of uninsured motorist policies that utilized the phrase "regardless of the number of motor vehicles insured under policy." Some people have more than one policy for more than one vehicle. The language in the 1987 legislation shows only the covered part, and it was the intention to basically say stacking is prohibited.

Jacqueline Lenmark, American Insurance Companies Association, said that the AICA supports SB 371.

Greg Van Horssen, State Farm Insurance, said that State Farm Insurance supports SB 371.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, presented written testimony. EXHIBIT 3 and 3A

Questions From Committee Members and Responses:

REP. VOGEL asked Ron Ashabraner, State Farm Insurance, what the difference is between underinsured and uninsured. Mr. Ashabraner said that "uninsured motorists" is coverage that protects the insurer from the negligence of a person who is insured. It will cover a person for any bodily injury received in a person's own

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-18-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow		✓	
Rep. Diana Wyatt	✓		

HR:1993
wp.rollcall.man
CS-09

CHILD SUPPORT ENFORCEMENT DIVISION OF SRS
Mary Ann Wellbank, Administrator

The Child Support Enforcement Division urges "DO PASS" on the following legislation, which will significantly improve child support enforcement in Montana and help us fill the gaps in services we provide to Montana children who depend upon us.

BILLS:

HB 228 Toole
HB 335 Toole (On behalf of SRS)
HB 482 Bohlinger

SB 150 Bartlett (On behalf of SRS)
SB 217 Nathe (Grosfield) (On behalf of SRS)
SB 392 Waterman

SUMMARY:

HB 228 - Uniform Interstate Family Support Act - resolves numerous interstate jurisdictional problems- may interstate cases have multiple child support orders issued by different states at different times. The bill specifies which order is enforceable.

HB 335 - CSER "Omnibus Bill". Has many necessary clean-up and efficiency provisions. See attached summary. Codification instruction coordinates amendment of 40-5-118 with HB 228.

HB 482 - 3 of the 4 main provisions are recommended by U.S. Interstate Commission on Child Support in its report to Congress - employer reporting of new hires, hospital paternity establishment, suspension of state issued licenses. Identical process for license suspension as SB 217, although covers more state issued licenses. Bill also improves Civil Contempt and makes it a more useful and effective tool.

SB 150 - Necessary legislation to achieve conformity with fed regs.

SB 217 - CSER bill to suspend professional and occupational licenses for delinquencies. Has built in due process and other safeguards which opportunity for hearing, repayment agreement, or "stay" of suspension in cases where suspension would cause financial hardship. Should be a very effective tool for enforcement of obligations of self-employed professionals who can afford to pay. Purpose is not to hurt person's ability to earn income, but to motivate repayment. HB 482 has identical license suspension process, although HB 482 encompasses all state licenses. If HB 482 is enacted, SB 217 becomes void.

SB 392 - Seek work requirements, lottery lien and most important, enhances criminal non-support to make laws more effective

HB 335 "AT A GLANCE"

DO PASS

An Act To Improve Efficiency and Effectiveness of Child Support Enforcement

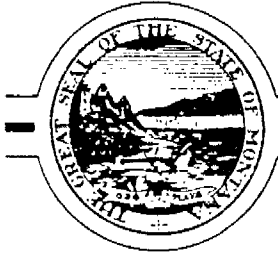
- 1. Providing for Additional Fees, Statutorily Appropriating Fees & Penalties**
Section 14: Expands CSED ability to develop regulations to charge fees to both obligors, and obligees, when appropriate or when neither party is "at fault"
- 2. Requiring Notice to CSED when Notice Required to Department**
Sections 11 and 25: Requires legal notices to be served on CSED rather than Department in general. Assures that CSED receives notices promptly.
- 3. Defining Support Order to Include Tribal Courts**
Section 10: Clarifies ambiguity in law to allow CSED to continue to enforce orders of tribal courts in cases where CSED has jurisdiction. Does not expand jurisdiction
- 4. Extending Services to Children Over Age 18**
Section 10: Redefines child to include 19 year olds, plus mentally or physically handicapped children over 18. Many support orders go beyond the age of 18 for students or handicapped children, yet the division cannot enforce them.
- 5. Requiring Private Businesses to Share Information**
Section 12: Requires businesses to provide information to assist the CSED in the location of an obligor or the obligor's assets.
- 6. Allowing Child Support to Follow Child**
Sections 8 & 24: Physical custody of some children frequently changes from a mother to a grandparent to an aunt. Allows support to follow child when physical custody changes without need for modification of order.
- 7. Enhancing Existing Support Liens on Real and Personal Property**
Sections 19, 20 & 27: Creates centralized record of liens in CSED, but amended language neuters this.
- 8. Providing Administrative Contempt Authority**
Section 16: Gives the CSED authority to enforce its own orders by providing for fines of up to \$500 for obligors who ignore orders to pay support.
- 9. Consolidating and Standardizing Statutes of Limitations**
Sections 2 - 7, & 21: Current statutes of limitations vary and provide incentive for obligor to evade payment until limitation is reached. Will standardize statutes to uniform period of 10 years after support order is terminated
- 10. Distribute Income Withholding Payments between Multiple Obligees**
Section 22: Allows the division to develop rules to distribute collections from an obligor's income to all the obligor's children of multiple obligees
- 11. Eliminating Obsolete Provisions**
Section 9: Housekeeping. Part of section 9 amending 40-5-118, MCA becomes void if HB 228 (Uniform Interstate Family Support Act) passes.
- 12. Correcting Inconsistent Provisions**
Section 18: Conforms two contradictory statutes with intent of law
- 13. Conforming Income Withholding Periods to Obligor Pay Periods**
Sections 8 & 23: Makes it easier for employers to comply with withholding requirements by permitting weekly or bi-weekly withholding of monthly ordered amounts.
- 14. Payment of Debts due the Department**
Section 28: Requires written agreement of the department before a debt can be considered paid in full. Protects department. Simple (accidental) endorsement on back of check won't suffice as agreement.

CHILD SUPPORT ENFORCEMENT DIVISION
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
Facts about the Division to Support Budget and Legislation

- Montana's Child Support Enforcement program is an important cornerstone of welfare reform. Shifting the burden for supporting dependent children away from taxpayers and back to financially able parents sends a clear and responsible message as well as raising needed revenue for this department and the state. The program permits repayment of monies spent on AFDC benefits, and helps keep borderline non-AFDC families off welfare. Once child support income becomes regular, many families are able to make the transition from welfare dependency to self-sufficiency.
- The division generates sufficient income through collections and federal matching funds to fully support its operations. For the most part, division funding is 66% federal; and 34% state special revenue. The division currently handles 38,000 cases, and cases are growing at a rate of 500 new cases per month. Caseload is projected to reach 53,356 cases within the next two and a half years. Greater efficiencies and legislative enhancements are needed to address the growing demand for services.
- The program receives no general fund dollars. In fact, last year the program raised and returned \$800,000 to the general fund. Better services and more collections help offset rising general fund costs of welfare programs, and will allow more children to be supported by their parents.
- Last year, the CSED collected nearly \$20 million from parents responsible for paying child support, representing a \$12 million increase in collections since 1989. Of this, \$7.3 million was returned to the state and federal governments to help offset AFDC payments made to families, and \$12.1 million was forwarded to custodial parents who do not receive AFDC. Currently, \$100 million in past due support is owed in Montana!
- In addition to its collections, the CSED actually saves Montana taxpayers money. National statistics show that for every \$5.00 of child support collected for families who aren't on AFDC, \$1.00 in public welfare benefits is saved. For last year, this cost avoidance translated to a savings of \$2.42 million for Montana citizens. Additionally, the division achieved savings of \$1,000,000 in Medicaid costs by identifying private insurers responsible for childrens' medical coverage. The division also collects parental contributions on behalf of the Department of Family Services
- Out-of-wedlock births continue to grow. Currently 25% of all Montana births are out-of wedlock.

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

EXHIBIT 2
DATE 3-18-92
SB 392



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370
(406) 444-4614

PO BOX 5955
HELENA, MONTANA 59604-5955

March 22, 1993

To: Sen. Mignon Waterman and members of the House Judiciary Committee

From: Mary Ann Wellbank, Administrator *[Signature]*

Re: SB 392 - Increasing the State's ability to enforce support obligations

During the House Judiciary Committee hearing on SB 392, Rep. Whalen requested copies of other state's statutes from which the language of subsections (4) & (5) of Section 4 of the bill were taken. The language at issue provides that a support order is prima facie evidence of a person's legal obligation to provide support, that in the absence of a support order no other evidence is required to prove a legal obligation to provide support than that which is necessary in a civil action, and that payment records are prima facie evidence of the amount of support paid and the arrearages accrued.

The language the CSED relied on when drafting these sections comes from four states: Illinois, Nevada, Wisconsin and Wyoming.

Illinois Rev. Stat. ch. 40, par. 1109 provides:

@6. No other or greater evidence shall be required to provide the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such fact in a civil action.

Nevada Rev. Stat. Ann. @201.070 provides:

1. No other or greater evidence is required to prove the marriage of the husband and wife, or that the defendant is the father or mother of the child or children, than is required to prove such facts in a civil action.

Wisconsin Stat. §948.22 provides:

(4) Under this section, the following is prima facie evidence of intentional failure to provide child, grandchild, or spousal support:

(a) For a person subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she is required to pay support equal to at least the amount set forth under s. 49.19 (11)(a) or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person, as defined in s. 49.01(2).

Wyoming Stat. §20-3-104 provides:

No other or greater evidence is required to prove the marriage of a husband and wife or that the defendant is the father or mother of a child or children than is required to prove such facts in a civil action. . . .

ILL. REV. STAT. CH. 40, PAR. 1109 (1992) printed in FULL format.

ILLINOIS REVISED STATUTES

*** THIS SECTION IS CURRENT THROUGH THE 1992 SUPPLEMENT (1991 SESSIONS) ***

CHAPTER 40. DOMESTIC RELATIONS
NON-SUPPORT OF SPOUSE AND CHILDREN ACT

Ill. Rev. Stat. ch. 40, par. 1109 (1992)

[Effective 1/1/93, Cite as: 750 ILCS 15/6]

1109. Evidence

@ 6. No other or greater evidence shall be required to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, than is or shall be required to prove such fact in a civil action.

NEV. REV. STAT. ANN. @ 201.070 (1991) printed in FULL format.

NEVADA REVISED STATUTES ANNOTATED
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*** THIS SECTION IS CURRENT THROUGH THE 1991 SUPPLEMENT ***
*** (SIXTY-SIXTH (1991) SESSION) ***

TITLE 15. CRIMES AND PUNISHMENTS
CHAPTER 201. CRIMES AGAINST PUBLIC DECENCY AND GOOD MORALS
DESERTION AND NONSUPPORT OF SPOUSE AND CHILDREN

Nev. Rev. Stat. Ann. @ 201.070 (1991)

@ 201.070. Evidence; husband and wife competent witnesses

1. No other or greater evidence is required to prove the marriage of the husband and wife, or that the defendant is the father or mother of the child or children, than is required to prove such facts in a civil action.

2. In no prosecution under NRS 201.020 to 201.080, inclusive, does any existing statute or rule of law prohibiting the disclosure of confidential communications between husband and wife apply, and both husband and wife are competent witnesses to testify against each other to any and all relevant matters, including the fact of the marriage and the parentage of any child or children; but neither may be compelled to give evidence incriminating himself or herself.

3. Proof of the desertion of a spouse, child or children, in destitute or necessitous circumstances, or of neglect or refusal to provide for the support and maintenance of the spouse, child or children, is prima facie evidence that such desertion, neglect or refusal is willful.

HISTORY: 1923, p. 288; CL 1929, @ 10521; 1985, p. 64.

NOTES:
CROSS REFERENCES. --As to husband-wife privilege, see NRS 49.295.

CASE NOTES

EVIDENCE TO SUSTAIN A CONVICTION. --In order to sustain a conviction under NRS 201.020, the state must prove: (1) parentage under NRS 201.025; (2) that defendant owed a legal obligation to pay child support (e.g., through a court order) under this section; (3) that defendant knew, or should have known, of the obligation; and (4) that defendant willfully failed to support his children. Epp v. State, 107 Nev --, 814 P.2d 1011 (1991).

ESTABLISHMENT OF WILLFULNESS. --The state establishes willfulness by showing that a parent: (1) had the ability to generate income; (2) earned wages during the time period in question; and (3) failed to make the child support payments. Epp v. State, 107 Nev --, 814 P.2d 1011 (1991).

Once the state established the element of willfulness, the defendant was free to demonstrate by way of a defense, that his nonsupport was lawfully excused or justified. Epp v. State, 107 Nev --, 814 P.2d 1011 (1991).

WIS. STAT. @ 948.22 (1989-1990) printed in FULL format.

WISCONSIN STATUTES 1989 - 1990

*** THIS DOCUMENT IS CURRENT THROUGH THE 1989 - 1990 LEGISLATIVE SESSIONS ***

CRIMINAL CODE
CHAPTER 948 CRIMES AGAINST CHILDREN

Wis. Stat. @ 948.22 (1989-1990)

948.22 Failure to support

(1) In this section:

(a) "Child support" means an amount which a person is ordered to provide for support of a child by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(b) "Grandchild support" means an amount which a person is legally obligated to provide under s. 49.90(1)(a) 2 and (11).

(c) "Spousal support" means an amount which a person is ordered to provide for support of a spouse or former spouse by a court of competent jurisdiction in this state or in another state, territory or possession of the United States, or, if not ordered, an amount that a person is legally obligated to provide under s. 49.90.

(2) Any person who intentionally fails for 120 or more consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of Class E felony.

(3) Any person who intentionally fails for less than 120 consecutive days to provide spousal, grandchild or child support which the person knows or reasonably should know the person is legally obligated to provide is guilty of a Class A misdemeanor.

(4) Under this section, the following is prima facie evidence of intentional failure to provide child, grandchild or spousal support:

(a) For a person subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she is required to pay support under an order, failure to pay the child, grandchild or spousal support payment required under the order.

(b) For a person not subject to a court order requiring child, grandchild or spousal support payments, when the person knows or reasonably should have known that he or she has a dependent, failure to provide support equal to at least the amount set forth under s. 49.19(11)(a) or causing a spouse, grandchild or child to become a dependent person, or continue to be a dependent person, as defined in s. 49.01(2).

(5) Under this section, it is not a defense that child, grandchild or spousal support is provided wholly or partially by any other person or entity.

(6) Under this section, affirmative defenses include but are not limited to inability to provide child, grandchild or spousal support. A person may not demonstrate inability to provide child, grandchild or spousal support if the person is employable but, without reasonable excuse, either fails to diligently seek employment, terminates employment or reduces his or her earnings or assets. A person who raises an affirmative defense has the burden of proving the defense by a preponderance of the evidence.

(7) (a) Before trial, upon petition by the complainant and notice to the defendant, the court may enter a temporary order requiring payment of child, grandchild or spousal support.

(b) In addition to or instead of imposing a penalty authorized for a Class E felony or a Class A misdemeanor, whichever is appropriate, the court shall:

1. If a court order requiring the defendant to pay child, grandchild or spousal support exists, order the defendant to pay the amount required including any amount necessary to meet a past legal obligation for support and, if appropriate, modify that order.

2. If no court order described under subd. 1 exists, enter such an order and do so, for orders for child or spousal support, after considering s. 767.25.

(c) An order under par. (a) or (b), other than an order for grandchild support, constitutes an income assignment under s. 767.265 and may be enforced under s. 767.30. Any payment ordered under par. (a) or (b), other than a payment for grandchild support, shall be made in the manner provided under s. 767.29.

HISTORY: 1985 a. 29, 56; 1987 a. 332 s. 33; Stats. 1987 s. 948.22; 1989 a. 31, 212.

NOTES:

Under 940.27(2), 1987 Stats., [now 948.22(2)] state must prove that defendant had obligation to provide support and failed to do so for 120 days; state need not prove defendant was required to pay specific amount. Sub. (6) does not unconstitutionally shift burden of proof. State v. Duprey, 149 W (2d) 655, 439 NW (2d) 837 (Ct. App. 1989).

WYO. STAT. @ 20-3-104 (1992) printed in FULL format.

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*** THIS SECTION IS CURRENT THROUGH THE 1992 SUPPLEMENT ***
*** (1992 REGULAR SESSION) ***

TITLE 20. DOMESTIC RELATIONS
CHAPTER 3. DESERTION OF WIFE OR CHILDREN

Wyo. Stat. @ 20-3-104 (1992)

@ 20-3-104. Evidence required to prove marriage and parenthood; husband and wife as competent witnesses; disclosure of confidential communications; desertion, neglect, or refusal to support, as prima facie evidence of willfulness

No other or greater evidence is required to prove the marriage of a husband and wife or that the defendant is the father or mother of a child or children than is required to prove such facts in a civil action. In a prosecution under this act [@@ 20-3-101 to 20-3-104] no statute or rule of law prohibiting the disclosure of confidential communications between husband and wife shall apply. Both husband and wife are competent witnesses to testify against each other to any relevant matters including the fact of marriage and the parentage of the child or children but neither shall be compelled to give evidence incriminating himself or herself. Proof of the desertion of the wife, child or children in destitute or necessitous circumstances, or of the neglect or refusal to provide for the support and maintenance of the wife, child or children is prima facie evidence that the desertion, neglect or refusal is willful.

HISTORY: Laws 1915, ch. 72, @ 6; C.S. 1920, @ 5036; R.S. 1931, @ 32-808; C.S. 1945, @ 9-808; W.S. 1957, @ 20-76; Laws 1977, ch. 152, @ 1; Rev. W.S. 1957, @ 20-3-104.

NOTES:

CROSS REFERENCES. --As to husband and wife as witnesses in civil and criminal cases generally, see @@ 1-12-101 to 1-12-104.

REPEALING CLAUSES. --Section 7, ch. 72, Laws 1915, repealed all laws and parts of laws in conflict therewith.

LAW REVIEWS. --See note, "Spouse's Testimony in Criminal Cases," 19 Wyo. L.J. 35 (1964).

For discussion of husband-wife testimonial privilege and the Federal Rules of Evidence, see XII Land & Water L. Rev. 601 (1977).

USER NOTE: For more generally applicable notes, see notes under the first section of this division, subarticle, article, chapter or title.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 392
DATE March 18, 1993 SPONSOR(S) M. Waterman

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
RJ Hertel Helena 3070 VILLARD #1074 59621	self	✓	
Kate Cholewa	MT Women Lobby	X	
M A Wellbank	CSED	✓	
John McRae	CSED	✓	
Amy Pfeifer	CSED	✓	
Charmaine Murphy	LOTTERY	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on March 24, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 357, SB 409, SB 351, SJR 15
Executive Action: SB 425, SB 408, SB 217, SB 392

HEARING ON SB 357

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, Senate District 20, Great Falls, said SB 357 is an act limiting the right of a witness in a proceeding before the securities commissioner to claim the privilege against self-incrimination in order to exclude the use of the testimony in any

on the part of the person not paying support. If a parent is delinquent in paying child support for whatever reason, oftentimes there is a misunderstanding or an oral agreement between the parties that child support will be paid one way rather than some other way.

REP. BROOKE said that, as far as she can determine, first of all, if it's a case of the person having a problem with payment arrangements, the timeline given in the bill is that person has to be six months or more in arrears. REP. BROOKE assumed that in those six months an agreement can be reached to get the payments back on track.

REP. TOOLE said this bill is targeting people who may have a firm, i.e., a law firm, that has gross revenue enabling them to employ a number of people. He said anyone losing a professional license is the type of person who ought to be able to pay child support if he has any kind of payroll at all. If it's a small operation and they can't handle the child support, they have the ability to negotiate.

Vote: SB 217 BE CONCURRED AS AMENDED. Motion carried 15-3 with REPS. BROWN, BIRD, and WHALEN voting no.

EXECUTIVE ACTION ON SB 392

Motion: REP. TOOLE MOVED SB 392 BE CONCURRED IN.

Motion: REP. TOOLE moved amendments. EXHIBITS 8 and 9

Discussion:

REP. CLARK is opposed to the bill as he feels a state agency should not make the decision of what a parent should pay according to salary.

It is REP. WHALEN'S understanding that the state of Montana has more statutes to enforce child support by an administrative agency than any other state in the United States. He said half a dozen child support bills have come through this committee. He thinks this bill has serious problems and there's not much that can be done to fix it.

Motion: REP. WHALEN MOVED SB 392 BE TABLED.

Discussion:

REP. TOOLE said many of these fathers don't participate in the first 18 years of the child's life in any way, and many of them don't make enough money to support themselves. He's opposed to much of this bill.

REP. BIRD opposes the bill up through page 6. She said some

fathers are not capable of working at a job for a specific period of time due to chemical dependency, for example.

Vote: MOTION TO TABLE SB 392 failed 11-6 with CHAIRMAN FAGG, REPS. BERGMAN, BROOKE, CLARK, GRIMES, MCCULLOCH, RICE, RUSSELL, SMITH, TOOLE, and WYATT voting no.

REP. BROOKE said she supports both sets of amendments as they clear up many questions the committee had regarding the bill.

REP. WHALEN asked if the amendments have been segregated. CHAIRMAN FAGG said amendments 1-4 will be voted upon first, and then the remainder of the amendments.

Motion: REP. CLARK made a substitute motion to strike Section 1 from the bill.

Discussion:

REP. WHALEN also feels that Section 1 is completely unnecessary, plus it grants authority to administrative bureaucracy.

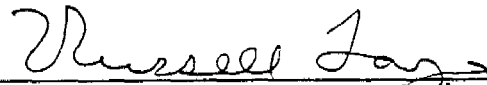
REP. CLARK closed on his amendment by stating he has no problem with collecting child support. He said the legislature has passed many child support bills this session which should have strengthened child support laws with CSED.

Vote: REP. CLARK'S amendment to strike Section 1 from the bill failed on a 9-9 tie. Those voting no were CHAIRMAN FAGG, REPS. BROOKE, GRIMES, MCCULLOCH, RICE, RUSSELL, SMITH, TOOLE, and WYATT.

CHAIRMAN FAGG, before adjourning the meeting, stated that executive action on SB 392 would be completed on the following day, March 25, 1993.

ADJOURNMENT

Adjournment: 12:00 p.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3/24/93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

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CS-09

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-24-93 BILL NO. SB 392 NUMBER 18MOTION: SB 392 be tabled failed 11-6

NAME	AYE	NO
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman		✓
Rep. Vivian Brooke		✓
Rep. Bob Clark		✓
Rep. Duane Grimes		✓
Rep. Scott McCulloch		✓
Rep. Jim Rice		✓
Rep. Angela Russell		✓
Rep. Tim Savles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	NO	VOTE
Rep. Diana Wyatt		✓

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

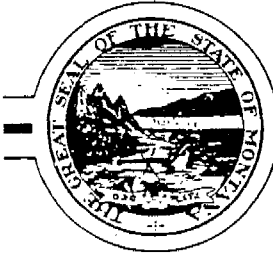
ROLL CALL VOTE

DATE 3/24/93 BILL NO. SB 392 NUMBER 18MOTION: SB392 Amendment fails to strike
Section 2 from the bill 9-9

NAME	AYE	NO.
Rep. Russ Fagg, Chairman		✓
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	✓
Rep. Bob Clark	✓	
Rep. Duane Grimes		✓
Rep. Scott McCulloch		✓
Rep. Jim Rice		✓
Rep. Angela Russell		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	9	9

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

EXHIBIT 8
DATE 3-24-93
SB 392



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

FAX # (406) 444-1370
(406) 444-4614

PO BOX 5955
HELENA, MONTANA 59604-5955

Amendments to SB 392 proposed by CSED

1. Page 1, line 13.
Following: "whenever"
Strike: "in a proceeding under this chapter to establish or enforce a support order it is determined"
Insert: "a hearing is held under this chapter and the hearing officer determines during the hearing"
2. Page 1, line 16.
Following: "or"
Insert: "determines the obligor is"
3. Page 1, line 16.
Following: "underemployed"
Insert: "without good cause"
4. Page 1, line 16.
Strike: "department"
Insert: "hearing officer"
5. Page 2, line 21.
Following: "IF"
Strike: ", AFTER A GOOD FAITH EFFORT TO DO SO,"
6. Page 9, line 3.
Following: "support"
Insert: "under a court or administrative order"
7. Page 9, line 3.
Following: "months"
Insert: "or more"
8. Page 10, line 25.
Following: "made"
Insert: "for the benefit of a child"
9. Page 11, line 1.
Following: "53"
Strike: "for the support or aid of any person"
10. Page 11, line 4.
Following: "the"
Strike: "person"
Insert: "child"

3/22/93

DEPARTMENT OF
SOCIAL AND REHABILITATION SERVICES
CHILD SUPPORT ENFORCEMENT DIVISION

EXHIBIT 9
DATE 3-21-93
SB 392



MARC RACICOT
GOVERNOR

PETER S. BLOUKE, PhD
DIRECTOR

STATE OF MONTANA

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PO BOX 5955
HELENA, MONTANA 59604-5955

March 23, 1993

To: Sen. Mignon Waterman and members of House Judiciary Committee

From: Mary Ann Wellbank, Administrator, Child Support Enforcement Division

Re: Amendments to SB 392 - Increasing the State's ability to enforce support obligations

In response to questions from the committee during the March 18 hearing on SB 392, the CSED has proposed a series of 10 amendments to the bill. The first four amendments amend Section 1 of the bill, clarifying that a hearing officer will determine, during an administrative hearing, whether an obligor is underemployed without good cause.

Amendment 5 removes the qualifier "after a good faith effort to do so" from the liability exemption in Section 2 of the bill, the portion relating to liens on lottery winnings. Subsection 4 of that section provides that the lottery shall make a good faith attempt to notify the IV-D agency of a match between a lottery winner and the CSED's list of obligors. The liability statement provides that the lottery shall have no liability if they are unable to so notify the CSED. Repetition of the "good faith effort" language was unnecessary here and could subject the lottery to proving their "good faith efforts". That was not the intent of the CSED.

Amendments 6 and 7 amend Section 4, criminal nonsupport. These amendments partially address Rep. Toole's concern that an individual could be charged with criminal nonsupport when a sum certain support order had not been issued. In fact, that is the current state of the law. This bill creates a new level of penalty for those obligors found to have failed to provide support for six months. These amendments remove Rep. Toole's fact scenario from this new higher penalty. The law and penalties currently in effect for that situation would remain unchanged.

Amendments 8 through 10 address Rep. Whalen's concerns regarding subsection (12) of Section 4. The amendments clarify that the department may sign a criminal complaint when public assistance is provided for the benefit of a child.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on March 25, 1993, at
8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: None
Executive Action: SB 392, SB 4, SB 5, SB 242, SB 153, SB 368
SB 179, SB 371, SB 260, SJR 15, SB 357

EXECUTIVE ACTION ON SB 392

(continuation from 3/24/93 executive action)

Motion: REP. HOWARD TOOLE MOVED SB 392 BE CONCURRED IN.

Motion/Vote: REP. LIZ SMITH moved an amendment to strike section 1 from the bill. Motion carried 14-4 with CHAIRMAN FAGG, REPS. BROOKE, TOOLE and WYATT voting no.

Discussion:

REP. RICE explained he is especially concerned with amendment number 5 regarding the Montana Lottery. He said if the Lottery failed to make the connection between someone who had won the lottery and had a child support obligation, that could be used against the lottery for payment.

Motion/Vote: REP. RICE moved to strike on page 2, line 21 the words, ", after a good faith effort to do so." Motion carried unanimously 18-0.

Motion/Vote: REP. HOWARD TOOLE moved to amend page 9, line 3 following the words "provide support" insert the words "under a court or administrative order"; and after the words "6 months" insert the words "or more." Motion carried unanimously 18-0.

Motion/Vote: REP. VIVIAN BROOKE moved amendments 1, 6, 7, 8 and 9 (see standing committee report). Motion carried unanimously.

Motion/Vote: REP. WHALEN moved to amend page 8, lines 10 through 13 by striking "in" on line 10 through the end of line 13. Motion carried 17-1 with CHAIRMAN FAGG voting no.

Vote: SB 392 BE CONCURRED IN AS AMENDED. Motion carried 11-7 with CHAIRMAN FAGG, REPS. BERGMAN, BROOKE, CLARK, GRIMES, McCULLOCH, RICE, RUSSELL, SMITH, TOOLE and WYATT voting yes. REP. LIZ SMITH will carry the bill on the House floor.

EXECUTIVE ACTION ON SB 4

Motion/Vote: REP. WHALEN MOVED TO TABLE SB 4. Motion carried 16-2 with REPS. VOGEL and SMITH voting no.

EXECUTIVE ACTION ON SB 5

Motion/Vote: REP. WHALEN MOVED TO TABLE SB 5. Motion carried 17-1 with REP. WYATT voting no.

EXECUTIVE ACTION ON SB 242

Motion/Vote: REP. WHALEN MOVED TO TABLE SB 242. Motion carried 15-3 with REPS. VOGEL, CLARK and SMITH voting no.

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-25-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

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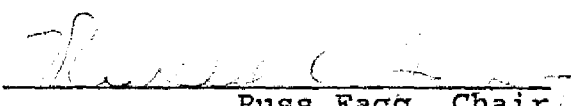
CS-09

HOUSE STANDING COMMITTEE REPORT

March 25, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 392 (third reading copy -- blue) be concurred in as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. L. Smith

1. Title, lines 5 through 7.

Strike: "ALLOWING" on line 5 through "ORDERS;" on line 7

✓ 2. Page 1, lines 13 through 25.

Strike: section 1 in its entirety

Renumber: subsequent sections

✓ 3. Page 2, line 21.

Strike: "AFTER A GOOD FAITH EFFORT TO DO SO,"

✓ 4. Page 8, lines 10 through 13.

Strike: "In" on line 10 through end of line 13

✓ 5. Page 9, line 3.

Following: "support"

Insert: "under a court or administrative order"

Following: "months"

Insert: "or more"

6. Page 10, line 25.

Following: "made"

Insert: "for the benefit of a child"

7. Page 11, lines 1 and 2.

Following: "53" on line 1

Strike: "for the support or aid of any person"

8. Page 11, line 4.

Strike: "person"

Insert: "child"

9. Page 11, lines 17 through 21.

Strike: "(1)" on line 17 through "(2)" on line 21

Committee Vote:

Yes 11, No 7.

6716213C.Hss

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 3-25-93 BILL NO. SB 392 NUMBER 18

MOTION: Motion to pass SB392 carries 11-7

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird		✓
Rep. Ellen Bergman		✓
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles		✓
Rep. Liz Smith	✓	
Rep. Bill Tash		✓
Rep. Howard Toole	✓	
Rep. Tim Whalen		✓
Rep. Karyl Winslow		✓
Rep. Diana Wyatt	✓	
	11	7